Yukon Ombudsman &
Information and Privacy
Commissioner

2006 Annual Report

January 1 to December 31, 2006

Office of the Ombudsman and Information & Privacy Commissioner

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—— Information and Privacy Commissioner ——

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Yukon Ombudsman &
Information and Privacy
Commissioner

June 2007

The Honourable Ted Staffen
Speaker of the Legislative Assembly
P.O. Box 2703
Whitehorse, Yukon
Y1A 2C6

Mr. Speaker:

I have the pleasure of presenting to you, and through you to the Legislative Assembly, the Annual Report of the Yukon Ombudsman and Information & Privacy Commissioner.

This report is submitted pursuant to Section 31(1), *Ombudsman Act* and Section 47(1), *Access to Information and Protection of Privacy Act*. The report covers the activities of the Office of the Ombudsman and the Information & Privacy Commissioner for the period January 1, 2006 to December 31, 2006.

Yours truly,

H Moorlag.

Hank Moorlag
Ombudsman

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Mission Statement

To provide an independent, impartial means by which public complaints concerning the Government of Yukon can be heard and investigated under the *Ombudsman Act*.

To provide an effective avenue for receiving and processing public complaints and requests for the review of decisions by public bodies related to the *Access to Information and Protection of Privacy Act*.

To promote fairness, openness and accountability in public administration.

The Function of the Ombudsman

The function of the Ombudsman is to ensure fairness and accountability in public administration in the Yukon.

The Ombudsman fulfills this function by receiving complaints, conducting an impartial and confidential investigation and, when warranted, recommending a fair and appropriate remedy.

The Ombudsman is not government but investigates government. The Ombudsman can recommend that an authority resolve administrative unfairness, but cannot order it to change its actions or decisions. The Ombudsman receives complaints from individuals and groups but is not their advocate.

The *Ombudsman Act* provides the statutory framework under which the Ombudsman carries out his function.

The Yukon Ombudsman has jurisdiction to investigate complaints about the actions, decisions, recommendations or actions of the following:

- departments of the Yukon Government;
- crown corporations and independent authorities or boards;
- public schools and Yukon College;
- hospitals and governing bodies of professional organizations; and
- municipalities and Yukon First Nations governments if requested by a municipality or First Nation.

The Ombudsman does not have the authority to investigate the following:

- complaints about actions which occurred prior to July 1996 when the *Ombudsman Act* became law;
- complaints about the courts, the Yukon Legislature, the Yukon Elections Office, or lawyers acting on behalf of the Yukon Government;
- disputes between individuals;
- complaints against the federal government; or
- complaints for which there is a statutory right of appeal or review.

The Ombudsman's office is an office of last resort. This means the Ombudsman encourages any complainant to raise his or her complaint with the authority first and then make a complaint to the Ombudsman if that route has been unsuccessful.

Ombudsman's Message

This annual report is the last one I will present because my second five-year term is coming to an end in the Spring of 2007. It may therefore be appropriate to look back over the ten years of experience to make some assessment about what impact the office has had, what successes have been achieved, and what challenges lie ahead for my successor.

Our mission is to promote fairness, openness and accountability in public administration. This is achieved by providing an independent, impartial means by which public complaints can be heard, investigated and resolved.

The year 2006 marked the tenth anniversary of the Office of the Ombudsman. This special milestone was recognized and celebrated by adopting the new logo introduced in last year's annual report.

Some years ago it occurred to me that it would be worthwhile to do an analysis of the complaints investigated and recommendations made, to determine what practical benefit the office brings. For example, I thought we should examine to what extent a recommendation would make an administrative process more efficient and effective as well as reducing public dissatisfaction. I wondered whether these elements could be quantified in ways that would demonstrate, perhaps even in dollar amounts, the impact of such a recommendation.

I did some research with my colleagues in Canada and internationally, to see if there was an approach that existed, or could be developed, to do this. I even phoned some professional contacts with a national accounting firm who specialize in defining the economic impact of business decisions and practices. I soon found out that the work of an Ombudsman office has so many variables, it is impossible to quantify the impact of that work in any precise way. Larger Ombudsman offices have developed effectiveness assessment tools, but they have the benefit of a much larger statistical base from which to draw conclusions.

I am therefore left with making a much more general and unscientific assessment of how effective the office has been in improving public administration in our jurisdiction. Our mission is to promote fairness, openness and accountability in public administration. This is achieved by providing an independent, impartial means by which public complaints can be heard, investigated and resolved.

It's important to point out that the work of the office is not limited to investigating complaints in isolation. In many ways the complaints and investigations provide opportunities to address much broader issues. As an example, we learned that many independent decision-making committees, boards, and tribunals did not have an adequate understanding of their independent role; how to apply procedural fairness standards; or how to write their decisions. The Office made recommendations in those cases where there were complaints, but we also encouraged all boards, committees, and departments, to ensure that they receive proper orientation and training.

Similarly, some branches of government are more apt to receive complaints than others. We offer the knowledge and expertise of the office in a general way to help with the development of internal complaint handling mechanisms. In those areas where we have conducted investigations into complaints, we have made specific recommendations to strengthen procedures. As an example, the office has worked closely with the staff and management of the Whitehorse Correctional Centre to strengthen the internal complaint handling procedures of that institution.

In these and other ways, the work of the office has made a real and noticeable difference over the past ten years. The potential for these positive changes is always enhanced significantly when the following factors are present:

- viewing an Ombudsman investigation as an opportunity to revisit decisions, policies and practices in a constructive, cooperative way, rather than in a defensive, adversarial way;
- remaining open to hearing and understanding a different viewpoint;
- having an understanding that there is great benefit to an independent review; and
- maintaining a professional, positive working relationship built on mutual trust and respect.

I am pleased to report that in the vast majority of cases, our work with officials in the various government departments, boards, commissions and other agencies, has been done in the presence of these factors. We have thus been able to participate in bringing about a positive change.

What kind of recommendations does the Ombudsman make after investigation? This is a question commonly asked. My response is there are usually two kinds of recommendations. The first involves correcting a wrong for the complainant; the second involves making changes to administrative procedures and practices to prevent a recurrence. Here is a list of the most common recommendations:

- rectify a delay;
- develop fact sheets or other similar information about a program which are written in plain language;
- explain review or appeal rights to those affected by a decision;
- provide adequate reasons for a decision;
- conduct an internal review of administrative procedures or policies;
- rehear a decision;
- define a procedure, or more clearly define an existing one;
- improve communication in specific ways;
- apply policies and procedures consistently;
- develop an interagency working protocol;
- document decisions with reasons;
- review and amend legislation;
- clarify eligibility criteria for programs providing a benefit;
- improve record keeping practices and procedures; and
- write to a complainant, acknowledging that an error was made, explaining why and what steps have been taken or are proposed to prevent a recurrence.

An Ombudsman investigation is seen as an opportunity to revisit decisions, policies and practices in a constructive, cooperative way — rather than in a defensive, adversarial way.

It has been my view that errors made by authorities should be acknowledged, explained and corrected. It is often the case that a good deal of time passes between when the error is made and when it is acknowledged. More often, it only comes after a recommendation from the Ombudsman following an investigation. Sometimes, however, an authority reluctantly owns up to a mistake.

My experience over the past ten years leads me to the conclusion that government can be much more open and accountable to the public in this respect. A broader discussion about making an apology, and removing the legal barriers for doing so, is found on page 9 of this report. There is no doubt that a sincere apology, offered in a timely manner, is a huge factor is dealing with an error, especially in those cases where it is important for the relationship between the parties to remain amicable. I would argue that the relationship between the government as a body, and members of the public falls into that category.

Errors made by authorities should be acknowledged, explained and corrected.

The most significant contribution I can make as my term of office comes to an end is to recommend to the Legislative Assembly that it introduce and pass an *Apology Act*. To do so will give public officials a clear message of an expectation to own up to mistakes and make things right, in addition to removing the legal barrier to making an apology.

My assessment of the effectiveness of the office over the past ten years is its significant and positive impact on public administration. However, there is more work to be done. Public education about the work of the office remains a challenge for us and, indeed, in all jurisdictions across Canada. I continue to be surprised at the number of times people ask me what I do as Ombudsman. We need to raise public awareness, including an introduction of the role and function of Ombudsman in our schools.

Public education about the work of the office remains a challenge.

The other challenge is to continue the development of working relationships with government officials. Building these bridges maximizes the opportunities to settle complaints early without the necessity of formal investigations.

The success of our office is due in great measure to the hard work and dedication of the staff. I thank them for their loyalty, diligence, and the application of their considerable skills in making the difficult day-to-day judgments and decisions.

Alice Purser has been the anchor of the office in her role as Administrative Assistant, covering off an amazingly wide range of duties. In addition to handling administrative tasks with budgeting and finance, records management and handling correspondence, she is the front line voice of the office as our receptionist, and coordinator of our activities. Alice has been with the office since January 1998.

Susan Dennehy is a highly skilled investigator, with the ability to analyze and identify the specific issues to be addressed. She is recognized as an authority on procedural fairness in public administration, which she applies in her work on case files and as a resource for training. She also makes a valuable contribution to the work of the office as our in-house legal counsel. Susan joined our office in October 2000.

My Senior Assistant, Catherine Buckler Lyon, has been with the office since its creation in July 1996. She has been the leader in making the transition from those early days by structuring the operations of the office and aggressively promoting the model of continuous improvement. In addition to her role as investigator, mediator, and negotiator, she has shared the responsibility of managing the office. She also recently completed her Masters in Public Administration.

It is a good feeling, indeed, to pass on to my successor an office with staff of exceptional caliber.

For me it has been an honour and a privilege to serve the Yukon Legislative Assembly and Yukon people as Ombudsman and Information & Privacy Commissioner. I am grateful to those who have given support to the office. I especially acknowledge the contribution made by those who have brought their complaints and concerns to the office. It has been through those complaints that the office has been able to improve public administration for the benefit of everyone.

It has been an honour and a privilege to serve as Ombudsman and Information & Privacy Commissioner.

Selecting a New Ombudsman

I am often asked how the Yukon Ombudsman is appointed. It is important to understand that the Ombudsman is a non-partisan, independent investigator. He or she must have the confidence of the public to handle complaints in an impartial way, at arms-length from government.

Therefore, the process for appointing an Ombudsman is very important. The *Ombudsman Act* describes how the appointment must be made:

2. ***The Commissioner in Executive Council shall, on the recommendation of the Legislative Assembly made by at least two-thirds of the members of the Legislative Assembly, appoint as an officer of the Legislative Assembly an Ombudsman to exercise the powers and perform the duties set out in this Act.***

An all-party committee of the Legislative Assembly advertises for the position setting out the knowledge, skills and experience required, and receives applications. A short-list of qualified candidates is developed and they appear before the committee for structured interviews. The candidate selected by the committee is then advanced to the Legislative Assembly and, on at least a two-thirds majority vote, is appointed Ombudsman by Order-in-Council.

The Ombudsman's term under the *Act* can only be for a five-year period. The Ombudsman may be reappointed for a further five-year term on recommendation of the Legislative Assembly by at least a two thirds majority vote, as set out in section 2 of the *Act*.

The Ombudsman must have the confidence of the public to handle complaints in an impartial way, at arms-length from government.

Tenth Anniversary

The year 2006 marked the 10th anniversary of the Yukon Ombudsman Office. Believing it was time to establish our own identity, we developed an office logo with the help of local graphic designer Dianne Villesèche. The logo was introduced in last year's Annual Report, tabled in the legislature in May 2006.

The logo design incorporates the two functions of the office — the outer circle representing the Ombudsman, and the inner image in the form of keyholes representing access to information and protection of privacy. The three inside images can also be seen as the three entities typically engaged in the work of the office: the public, the Yukon Government, and the Ombudsman/IPC. We also introduced the slogan, *"10 years — promoting fairness, openness and accountability"* for the anniversary year. The logo and slogan appeared on all material produced by the office in 2006.

We had ball-point pens made up with the new logo on the barrel and the inscription, *"Improving good government"*, as a way to promote the office and to make the important point that the work of the office is to improve systems and processes of public administration already providing a good service to Yukoners.

To further commemorate the 10-year milestone, work was initiated on a Fairness Booklet, which will serve as a reference handbook on fairness standards for our office, the public, and government officials. It will cover the basic principles of administrative fairness and provide plain language descriptions of what is meant by the terms and expressions used in section 23 of the *Ombudsman Act*.

23.(1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or in irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his or her opinion and the reasons for it to the authority and may make the recommendation he or she considers appropriate.

Apology Legislation

In last year's Annual Report, I commented on the call by the British Columbia Ombudsman, Howard Kushner, for the introduction of legislation that would permit public authorities to offer an apology without the apology being admitted as evidence in civil litigation.

In a press release dated February 8, 2006, the basis for the recommended legislation is explained:

> *"My experience as Ombudsman has demonstrated to me the power of an apology in settling disputes," said Kushner. "However, too often I hear from public agencies that they will not apologize, for fear that their apology will be used against them as acknowledgement of liability in any potential civil action."*
>
> *Kushner stated that his office has recommended that public officials apologize to individuals who experienced unfairness. Kushner said that, in place of an apology, some officials are willing to express their regrets, but that regrets may not satisfy a person's need for an apology. "A sincere apology conveys more than regret," notes Kushner. "The person who apologizes is taking responsibility for the actions in question. Saying 'I am sorry' often allows a person to forgive and move on.*

Mr. Kushner's compelling argument for 'Apology Legislation' is contained in his special report, *The Power of an Apology: Removing the Legal Barriers*[1].

The BC Ministry of Attorney General had already issued a discussion paper on apology legislation on January 30, 2006[2]. The paper made reference to evidence emerging in the United States in the area of medical malpractice litigation supporting the view that apologies can reduce litigation and promote the early resolution of disputes. According to the paper, a recent review of apologies in Canadian law indicates the legal consequences of an apology are far from clear. Lawyers continue to be concerned that an apology could be construed as an admission of liability. An apology could also have adverse consequences for insurance coverage. As a result, lawyers generally advise their clients to avoid apologizing.

The discussion paper came to the following conclusion:

> *Evidence and experience suggests that many disputes could be resolved earlier, more effectively and less expensively if apologies were promoted within our legal system. ... British Columbia proposes to adopt the broader form of apology legislation. This could be accomplished by enacting legislation preventing liability arising out of an apology, by making the apology inadmissible for the purpose of proving liability and by providing that an apology does not constitute an admission of liability.*

The drafting of apology legislation is obviously not a taxing exercise. BC's legislation contains only two sections. The entire *Apology Act* is as follows:

Definitions

1. ***In this Act:***
"apology" means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the

[1] www.ombudsman.bc.ca/reports/Special_Reports/Special%20Report%20No%20-%2027.pdf

[2] www.ag.gov.bc.ca/dro/publications/other/Discussion_Apology_Legislation.pdf

words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate;
"court" includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity.

Effect of apology on liability

2.(1) An apology made by or on behalf of a person in connection with any matter
(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter,
(b) does not constitute a confirmation of a cause of action in relation to that matter for the purposes of section 5 of the Limitation Act,
(c) does not, despite any wording to the contrary in any contract of insurance and despite any other enactment, void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available, to the person in connection with that matter, and
(d) must not be taken into account in any determination of fault or liability in connection with that matter.
(2) Despite any other enactment, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any proceeding and must not be referred to or disclosed to a court in any proceeding as evidence of the fault or liability of the person in connection with that matter.

This legislation is sufficiently broad to apply in any situation, from administrative errors by government officials to a traffic mishap. The *Apology Act* was passed by the BC Legislature on April 25, 2006.

Similar to the experience by the BC Ombudsman office, my office has found that a sincere apology offered by public officials can lead to the early settlement of many complaints. However, making an apology does not come easily to those officials who are secure in the belief that rigid bureaucratic policies and practices must be followed despite the unfairness they sometimes create. An extreme example of this was shared at the September 2006 United States Ombudsman Association Conference in Iowa by an Ombudsman from Great Britain. He quoted from a letter by a government official, making this form of an apology:

> *"The Committee has considered the Ombudsman's report and by 9 votes to 7 has resolved that I be instructed to offer you an apology. This letter constitutes that apology. However, I must warn you that if such circumstances recur I will not hesitate to act as I did before."*

Attitudes like this are actually not uncommon. We just don't find them reflected in written form very often. The reality is that public officials will often go to great lengths in an attempt to avoid a mistake entirely, rather than admit they made one.

In my view, positive change can take place when there is institutional support for admitting an error, explaining why it happened and what is being done to prevent a recurrence, and to make a sincere apology. Providing a legislative base for doing so through an *Apology Act* is an important step in that direction.

I recommend the Government of Yukon introduce and pass this legislation.

CCPO Annual Meeting
Whitehorse

The Canadian Council of Parliamentary Ombudsman (CCPO) represents the provincial and territorial Ombudsman offices across Canada. Only the Northwest Territories, Nunavut and Prince Edward Island do not have an Ombudsman.

The CCPO gives its members the ability to share and discuss matters of common interest; to network with other ombudsman organizations; and to make representation on behalf of Canada's parliamentary ombudsman. An example of the latter is the repeated calls by the CCPO, and its predecessor organization, the Canadian Ombudsman Association, to the Government and Parliament of Canada to appoint a federal Ombudsman of general jurisdiction. The CCPO has also given advice and recommendations to the Federal Government on proposed legislation that would include an Ombudsman for Canada's First Nations; and it was consulted on the appointment process for the Nova Scotia Ombudsman. I am honoured to have been a founding member of the CCPO; and to have served as a Director and as its President.

In June, 2006, the annual meeting of the CCPO was hosted by the Yukon Ombudsman Office. We were pleased to have as special guests Ombudsman Linda Lord-Jenkins from our neighbouring jurisdiction, the State of Alaska, and Bermuda Ombudsman Arlene Brock. Ms. Brock had been newly appointed and was attending an Ombudsman training program in Vancouver. She took the opportunity to join us in Whitehorse to learn more about the institution of ombudsman in Canada and to establish a working relationship with Canadian colleagues.

In addition to our always productive round-table discussions, we were treated to a guided tour of the Yukon Legislative Assembly with Patrick Michael, the Assembly Clerk. Mr. Michael informed and entertained us with a history of the legislature in the Yukon, including some interesting anecdotes from the past. We were also honoured to have Mr. Michael join us as guest speaker at our luncheon.

Ombudsman Issues

Can the Ombudsman investigate a Management Board decision?

An area in downtown Whitehorse known as the Shipyards was a waterfront squatter community that once housed much of the postwar downtown population. In 1998 as part of a waterfront development project, the Yukon Territorial Government passed legislation to remove the approximately 12 cabins that remained and developed a pricing policy to be applied in each case to determine the compensation to be paid as part of the removal process. An individual complained that the compensation he was to receive based on the pricing policy established by government for his interests in a cabin and outbuildings located in the shipyard area was unfair.

The pricing policy which was the subject matter of this complaint was established by Management Board, a committee of Cabinet which sets the rules or policy in the area of personnel and finance under which Departments and agencies of government must operate. Unlike Ombudsman legislation in other provinces, the Yukon *Ombudsman Act* does not explicitly exclude Cabinet committee activities from the Ombudsman's jurisdiction. It does, however, limit the powers and duties of the Ombudsman to investigate a complaint to "matters of administration". In this case a question arose as to whether the decision of Management Board concerned a matter of administration.

Powers and duties of Ombudsman in matters of administration

The question of what a matter of administration is has been considered by the courts in several cases. Essentially, the cases say the policy choices of government are not subject to comment by the Ombudsman. There are often competing interests that must be considered in developing policy. It is the government's responsibility and prerogative to decide how those competing interests are to be reconciled as evidenced in a policy framework accepted by the government. The Ombudsman's role is to consider the fairness of the implementation of the policy.

It was determined that Management Board had responsibility for establishing the pricing policy to be used to determine the compensation the complainant and others would receive for their interests in the buildings located in the ship yards area. This was not something the Ombudsman could comment on. He could, however, examine the application of the policy to the complainants situation to determine if it had been applied fairly. The Ombudsman concluded that the pricing policy guidelines had been applied fairly in the circumstances of this case.

11.(1) It is the function and duty of the Ombudsman to investigate on a complaint any decision or recommendation made, including a recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his, her or its personal capacity, in or by any authority, or by any officer, employee or member thereof in the exercise of any power or function conferred on him or her by any enactment.

Consistent Application of Fairness

A complainant was entitled to an annual indexing of his compensation benefits according to a formula set out in the the *Worker's Compensation Act*. The legislation required the indexed payments to be paid on the first day of the month following the anniversary date, which for this complainant was February 1 each year. The practice of the Yukon Worker's Compensation Health and Safety Board (the Board), however, was to apply all of the indexes at the end of the year and make a retroactive lump sum payment in December.

The Board acknowledged "... the indexing of benefits is an important issue – one which needs to be done properly and in accordance with the *Workers' Compensation Act*." The Board also acknowledged that indexing in December each year retroactive to the effective date did not meet the requirements of the legislation. However, the Board indicated that its ability to pay according to the law was "severely constrained by our current computer system which does not allow us to automatically index each entitled injured workers' benefit on their anniversary date and monthly thereafter." The Board advised that it was in the process of purchasing a new computer system and was confident that by the following year it would be able to index benefits as required by law.

The Ombudsman asked the Board to consider manually indexing this individual's compensation but it declined, saying to do so would require "lots of time and money" which could not be justified for one case. In its response to the Ombudsman the Board gave several reasons besides costs for refusing to make a manual adjustment in this case. The Ombudsman considered some of the reasons to be particularly troubling, feeling the Board lacked an understanding of appropriate standards of fairness.

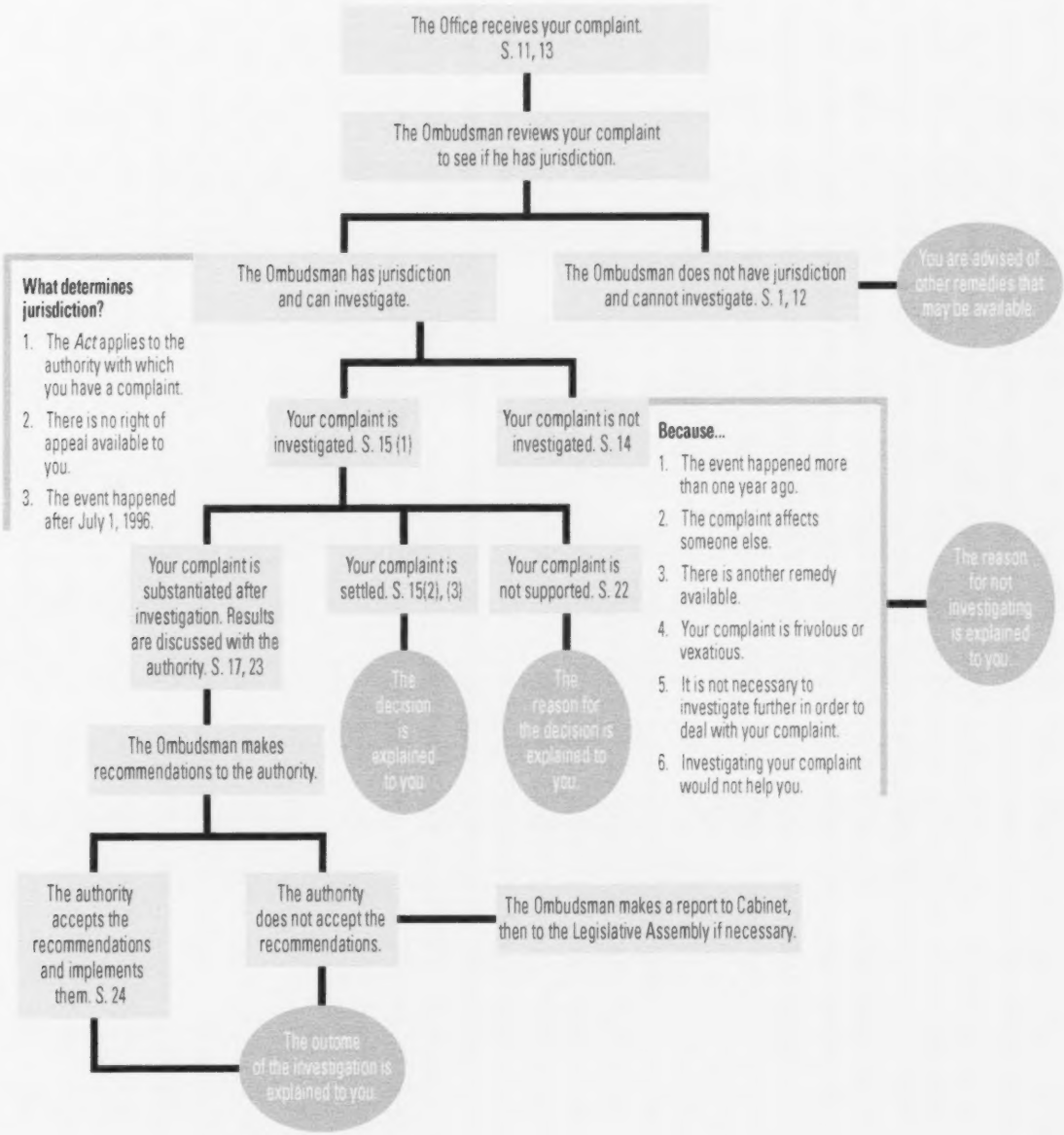
The Board suggested that manually indexing for only one claimant was "unethical" and argued if it couldn't be done for all it shouldn't be done for one person. While this approach may have ensured that all claimants were treated in an equal manner, it certainly did not ensure that all claimants were treated in a fair manner. An important aspect of fairness is the exercise of discretion, where an authority ensures that it considers each case on its own merits. Taking the all-or-none approach fails to consider what is fair in each case.

The Board also expressed concern that there would be a flood of requests from other claimants. The Ombudsman considered it unacceptable to not address an unfairness for one simply because others who had been treated equally unfairly might also request that the matter be corrected.

The Ombudsman substantiated the complaint of unfairness on the basis that the failure to pay as required was contrary to law. However, he was satisfied that the Board was taking reasonable steps to ensure payments could be made in the future as required by the legislation.

While this approach may have ensured that all claimants were treated in an equal manner, it certainly did not ensure that all claimants were treated in a *fair* manner.

Ombudsman Flow Chart of Complaints


The Office receives your complaint. S. 11, 13
The Ombudsman reviews your complaint to see if he has jurisdiction.
What determines jurisdiction?
1. The Act applies to the authority with which you have a complaint.
2. There is no right of appeal available to you.
3. The event happened after July 1, 1996.
The Ombudsman has jurisdiction and can investigate.
The Ombudsman does not have jurisdiction and cannot investigate. S. 1, 12
You are advised of other remedies that may be available.
Your complaint is investigated. S. 15 (1)
Your complaint is not investigated. S. 14
Because...
1. The event happened more than one year ago.
2. The complaint affects someone else.
3. There is another remedy available.
4. Your complaint is frivolous or vexatious.
5. It is not necessary to investigate further in order to deal with your complaint.
6. Investigating your complaint would not help you.
The reason for not investigating is explained to you.
Your complaint is substantiated after investigation. Results are discussed with the authority. S. 17, 23
Your complaint is settled. S. 15(2), (3)
Your complaint is not supported. S. 22
The decision is explained to you.
The reason for the decision is explained to you.
The Ombudsman makes recommendations to the authority.
The authority accepts the recommendations and implements them. S. 24
The authority does not accept the recommendations.
The Ombudsman makes a report to Cabinet, then to the Legislative Assembly if necessary.
The outcome of the investigation is explained to you.

Statistical Summaries

JURISDICTIONAL COMPLAINTS HANDLED	
Brought forward from 2005	32
investigations	29
not yet analyzed	3
Received in 2006	37
TOTAL	**69**
Completed in 2006	36
Carried over to 2007	33
investigations	33
not yet analyzed	—

RESOLUTION OF JURISDICTIONAL COMPLAINTS RECEIVED	
Opened as investigation	13
Referred to another remedy	8
Further investigation not necessary	8
Insufficient information provided	5
Complaint withdrawn	4
Legislated appeal exists	2
TOTAL	***40**

* This total includes the three complaints not yet analyzed in 2005.

INVESTIGATIONS HANDLED	
Brought forward from 2005	29
Opened in 2006	13
TOTAL	**42**
Completed in 2006	9
Carried over to 2007	33

OUTCOME OF INVESTIGATIONS COMPLETED	
Complaint substantiated	3
Resolved when authority informed of complaint	—
Settled under s 15/17 during or after investigation	3
Report/recommendations to authority under s 23	—
Complaint not substantiated	—
Complaint discontinued	6
TOTAL	**9**

NON-JURISDICTIONAL COMPLAINTS	
Businesses	8
Federal	5
First Nations	1
Municipalities	2
Other	3
Other Provinces	2
RCMP	2
YTG — non-jurisdictional	2
TOTAL	**25**

These complaints often require time to research before being referred to other agencies for assistance.

COMPLAINTS RECEIVED — BY AUTHORITY

AUTHORITY	OPENED AS INVESTIGATION	NOT OPENED AS INVESTIGATION*	NOT ANALYZED	TOTAL
Community Services	—	1	—	1
Energy, Mines and Resources	2	1	—	3
Health and Social Services	3	4	—	7
Heritage Resources Board	1	—	—	1
Student Financial Assistance Committee	1	—	—	1
Whitehorse Correctional Centre	6	18	—	24
Yukon College	—	1	—	1
Yukon Legal Services Society	—	1	—	1
Yukon Workers' Compensation Health & Safety Board	—	1	—	1
TOTAL	**13**	**27**	**—**	**40**

* This includes three complaints not yet analyzed in 2005.

OMBUDSMAN REQUESTS FOR INFORMATION

TOTAL	**98**

Requests for information often require time to research.

The Function of the Information and Privacy Commissioner

The primary purpose of the *Access to Information and Protection of Privacy Act* (the *Act*)[3] is to make departments and agencies of government, called public bodies, more accountable to the public and to protect personal privacy. The *Act* does so in a number of ways:

- giving the public a right of access to records;
- giving individuals a right of access to, and a right to request correction of, personal information about themselves;
- specifying limited exceptions to the rights of access;
- preventing the unauthorized collection, use and disclosure of personal information; and
- providing for an independent review of decisions made under the *Act*.

The Information and Privacy Commissioner (Commissioner or IPC) carries out these independent reviews. However, the right to a formal review by the Commissioner is limited to the following under the *Act*:

- a refusal to grant access to a requested record;
- a decision to separate or obliterate information from a requested record;
- a decision about an extension of time for responding to a request for access to a record; and
- a decision to deny a request for a waiver of a fee imposed under the *Act*.

There is also a right of review if a person believes his or her personal information was collected, used or disclosed by a public body in a way that was contrary to the requirements of the *Act*.

A supplementary provision of the *ATIPP Act* gives the Commissioner responsibility for monitoring how the *Act* is administered to ensure its purposes are achieved. He may, among other things, receive complaints or comments from the public concerning the administration of the *Act*, conduct investigations into those complaints, and make reports. The Commissioner may also comment on the implications for access to information or for privacy protection of existing or proposed legislative schemes or programs of public bodies.

[3] Throughout the remainder of this annual report, the *Access to Information and Protection of Privacy Act* is referred to either as the *Act* or the *ATIPP Act*. The terms are interchangeable.

Commissioner's Message

The year 2006 marks the tenth anniversary of the IPC office. The office has two primary functions: to review certain decisions of public bodies under the *Access to Information and Protection of Privacy (ATIPP) Act*, and to monitor how the *Act* is administered to ensure its purposes are achieved. This second function includes investigating complaints or comments about the administration of the *Act*, and commenting on what impact there may be on access or privacy rights with respect to proposed or existing legislative schemes or programs of public bodies.

After 10 years' experience with the *Act*, I think it is useful to highlight a sampling of what has been learned through the 310 reviews and investigations we have completed:

- There is a clear understanding, supported by the Yukon Supreme Court, that exceptions to the general right of access do not offer 'blanket' protection of records. It is the information within records that must be examined line-by-line to determine if an exception applies and, if that information can be reasonably separated or obliterated from the record, the applicant is entitled to the remainder of the record.

- When it comes to deciding whether there is a right of access, departmental policy does not trump the provisions of the *Act*.

- The default response for access requests should be full disclosure, subject only to limited and specific exceptions.

- Ministerial briefing notes do not enjoy special blanket protection from disclosure. Only those parts that would reveal advice or recommendations may be withheld. Even then, discretion may be exercised in favour of disclosure. Factual information must be disclosed.

- Views or opinions expressed in records are the personal information of the person the views or opinions are about. Unless other unusual and compelling circumstances authorized by the *Act* are present, individuals are entitled to access their own personal information.

- Most exceptions to the general right of access include a 'harms test' requiring public bodies to demonstrate how the disclosure would be harmful. In reviews of decisions under the *Act* it is not sufficient to make a simple assertion that disclosure would be harmful. It is also not sufficient to rely on a discretionary exception as 'authority' to refuse access. The public body must explain why it could not exercise its discretion in favour of disclosure in the interests of openness and accountability.

This is a small sampling of clarification points related to the *Act's* requirements. There are many more that have arisen as issues in reviews, or have been the focus of investigations.

When it comes to deciding whether there is a right of access, departmental policy does not trump the provisions of the *ATIPP Act*.

In many other Canadian jurisdictions the decisions by Information and Privacy Commissioners are published on their web sites. These decisions are an excellent reference source when dealing with matters of statutory interpretation and the intended operation of specific provisions in the legislation. Most of the provisions related to the rights of access or the protection of privacy use common language and application, so the reasoning behind the findings can usually be applied directly to matters under review in Yukon.

Yukon public bodies with more frequent requests for access under the *Act* now have departmental coordinators who use this body of knowledge when researching the right of access to information in records. This is a very positive trend, and a move away from a reliance on departmental policy as the first response to an access request.

Our office is undertaking a process of preparing our own Reports After Review for posting on the office web site, as a more direct reference source related to the administration of our *Act*. This requires careful editing of the reports to ensure personal identifiers are removed to avoid an inadvertent disclosure of personal information. An assessment also needs to be made about whether a description of the circumstances of a case may reveal the identity of the individual who requested the review. In those cases, we intend to edit the report and post the more generic discussions about the issues under review and the findings.

Two positive steps have been taken by government that address my concerns about the purpose and intent of the *Act* not making its way into the day-to-day operations of government departments. One is the production of an annotated guide for handling requests for access to records of the Department of Health and Social Services. The other is the release of the first annual activity report on the administration of the *Act*. The report provides information about various aspects of the *Act's* administration and includes helpful statistical tables about access requests received and how they were handled. Further reference to these two publications is made on page 20.

I also report on a successful Right to Know Week, at page 29. It was very gratifying to be part of a steering committee that brought together a cross-section of the community with an interest in celebrating the democratic principle of openness in government and private sector institutions. I was particularly pleased to have representation on the committee from the Yukon Government, as an expression of its commitment to this principle.

It is regrettable that these positive trends and activities are offset by the challenges presented by the weakness of the *Act*. It is flawed legislation that is badly in need of review and amendment. The direction has been to seek non-legislative options for addressing the problems. In my view, this is akin to "putting lipstick on a pig".

The default response for access requests should be full disclosure, subject only to limited and specific exceptions.

In the last number of annual reports I have explained why a review of the *ATIPP Act* is urgently required, and have provided a list of amendments this office has identified as necessary. Again, in this report, at page 21 I repeat the pressing need to either amend the *Act* to include regulatory control over custodians of personal health information, or to bring in separate legislation that will fill the present gap in privacy protection in anticipation of Canada-wide electronic health records. I urge government to move quickly on this.

The ATIPP Act is flawed legislation that is badly in need of review and amendment.

To end on a positive note, all requests for review received by the office were successfully mediated or settled otherwise, save one. It is a significant achievement to have only one inquiry and formal report in the year, particularly in light of the almost 350 access requests received by government in fiscal year 2005/06.

Embracing the Purpose and Intent of the *Act*

In my last few annual reports, I expressed concern that the purpose and intent of the *ATIPP Act* have not found their way into the day-to-day operations of departments. My observation has been that departmental policies often seem to be the default response to access requests rather than the provisions of the *Act*.

Two significant steps were taken this past year by government to rectify this situation. The first was the production of an annotated guide to certain sections of the *ATIPP Act*. This work, undertaken by Health and Social Services, provides a detailed guide for dealing with access requests to records containing highly sensitive personal information.

The guide includes an excellent analysis and interpretation of the relevant provisions of the *Act* about the rights of access, on the one hand; and the requirement to avoid disclosure of third party personal information if that disclosure would be an unreasonable invasion of the third party's personal privacy, on the other hand.

The guide refers to numerous decisions by the Information and Privacy Commissioners in various Canadian jurisdictions, including Yukon. Although this current document stands as a reference tool specifically for Health and Social Services staff in handling access requests, I have urged the Deputy Minister and the Records Manager to include this work in the ATIPP Manual for general application across departments.

The second significant step was the government's release of the first annual ATIPP Activity Report. In previous annual reports, I called on the government to publish an annual report on the administration of the *Act*. Other jurisdictions have a requirement in their legislation to produce such a report which would show, for example, the volume of access requests, how they were handled, a breakdown of information disclosed and information withheld.

Although there is no such requirement in the Yukon's *ATIPP Act* to produce an annual report on the administration of the *Act*, it was my view that it would be a positive and proactive step to do so.

I was therefore very pleased to see the release of the Activity Report on the Administration of the *ATIPP Act* for the period April 1, 2005 to March 31, 2006. This document reports on the number of access requests received, with an historical representation of requests annually since the inception of the *Act* in 1996. The statistical reports include tables showing the requests by public bodies, by categories of applicants, and how the requests were decided. The report also includes general information about the administration of the *Act*. It is online at www.atipp.gov.yk.ca.

This annual report is an excellent base for comparative purposes in the future. It is my hope that it will also become a place where general comments on the administration of the *Act* will be expressed. This could include challenges faced during the year, and opportunities for the future.

I extend my congratulations to the staff in the office of the ATIPP Records Manager for putting together this informative report.

Adequate Protection of Personal Health Information

The personal health information of Yukoners needs to be better protected. The federal government is making huge investment into the creation of electronic health records. A large number of programs under Canada Health Infoway are intended to maximize emerging technology as a means to provide better health care to Canadians.

The challenge, in this headlong rush, is to ensure these programs are designed to also respect and protect personal health information. Whereas hard-copy medical records can be easily secured from unauthorized access, electronic records are moved around in ways that are much more difficult to manage. The organizations involved in the transition to electronic health records have a very clear expectation, as does the public, that there will be a comprehensive legislative framework within which these programs can operate, so adequate privacy protection rules are present and can be enforced.

In last year's report I gave a practical example of a program that uses electronic personal health information — the Chronic Disease Management (CDM) Collaborative Program. This program uses a computer-based tool to assist health practitioners to collect, share and analyze data about patients with a chronic disease. Information is captured from a number of partner medical practitioners, including family physicians, nurse practitioners, dieticians, home care nurses, pharmacists and therapists. The information is then available to all the partners through a database 'toolkit' to make patient care more efficient and effective. The concern I expressed then, repeated here, is the serious gaps that exist in the Yukon's legislative framework for protecting personal health information in programs like these.

Information and Privacy Commissioners across Canada often refer to the existing mix of privacy laws across Canada as a "legislative patchwork". Every federal, provincial and territorial jurisdiction has privacy legislation. Some provinces have expanded the scope to include all regional health authorities and other custodians of personal health information. Other jurisdictions have passed separate health information legislation.

In previous Annual Reports I have commented that the *Act* falls well short of protecting our personal privacy. This is the result of a restrictive definition of "public body" in the *Act* not found elsewhere in Canadian legislation. Under this definition, only those health practitioners within Yukon government health programs must comply with *ATIPP Act* standards for the collection, use, and disclosure of personal health information. Other entities which handle personal health information, such as the Whitehorse General Hospital, contract health care providers, non governmental organizations, school councils, private health practitioner clinics, and pharmacies do not fall within the scope of the *ATIPP Act*.

The *Personal Information Protection and Electronic Document Act* (*PIPED Act*) applies to federally regulated organizations such as banks, broadcasters and airlines as well as organizations involved in commercial activity. Health care providers in private practice, such as doctors, dentists, chiropractors and pharmacists, are considered subject to the *PIPED Act* because they are engaged in commercial activity. However, non-commercial areas of health care such as publicly funded hospitals are not subject to the *PIPED Act*. In the case of Whitehorse General Hospital, neither the Yukon's *ATIPP Act* nor the federal *PIPED Act* applies to patient's personal health information.

The concern is the serious gaps that exist in the Yukon's legislative framework for protecting personal health information.

In the case of Whitehorse General Hospital, neither the Yukon's *ATIPP Act* nor the federal *PIPED Act* applies to patient's personal health information.

British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario have much broader public sector privacy legislation than the Yukon and in some cases have additional private sector legislation. They have all taken appropriate action to patch the health information privacy gap with specific personal health information legislation. In the Yukon, the *PIPED Act* and *ATIPP Act* provide only partial protection for personal health information.

In addition to Canada Health Infoway programs, personal health information of Yukoners is also transferred within the territory and between jurisdictions on a regular basis, such as when treatment is given in Vancouver or Edmonton. We are in the midst of a trend in the health care field to move information electronically. This creates a compelling need to act quickly. Immediate action must be taken to stem the unprotected flow of Yukoners' personal health information.

In my view the problem can be corrected easily by expanding the definition of a public body in the *Act* to include all custodians of personal health information. Alternatively, Yukon can follow the lead of Alberta, Saskatchewan, Manitoba, and Ontario by enacting stand alone legislation for the protection of personal health information.

Review and Comment on Programs and Legislation

The general powers provision of the *ATIPP Act* gives the Commissioner responsibility for monitoring how the *Act* is administered to ensure its purposes are achieved. This can be done by commenting on the implications for protection of privacy of existing or proposed legislative schemes or programs of public bodies.

42. In addition to the commissioner's powers and duties under Part 5 with respect to reviews, the commissioner is responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(c) comment on the implications for access to information or for protection of privacy of existing or proposed legislative schemes or programs of public bodies;

A useful means of assessing the privacy implications of a program or legislative scheme is through development of a Privacy Impact Assessment (PIA).

Use of Privacy Impact Assessments

A PIA assists public bodies in reviewing the impact on an individual's privacy of a new program, legislation or any other project involving the collection, use or disclosure of personal information. The process is designed to ensure that a public body evaluates the initiative to ensure compliance with the *Act*. It involves a thorough analysis of the potential impacts the proposal may have on privacy.

All public bodies are encouraged to complete a PIA when introducing new programs, policy or guidelines, or modifying existing ones. However, submitting a completed PIA to the Commissioner is not an approval process and although the public body may use comments provided by the Commissioner, it is not required to do so.

The Commissioner will comment after reviewing the PIA, if it is found that:

- the legislative authority is unclear or missing;
- the impact on privacy is not addressed;
- the impact on privacy is significant;
- the impact on privacy is not mitigated; or
- the impact on privacy outweighs the benefits of the program or scheme.

In 2006 the Commissioner considered the privacy implications in the following cases.

Driver's Licence Security Standards

Motor Vehicles Branch announced in a news release that computer systems were to be improved and driver's licences brought up to new security standards, providing enhanced security for protecting personal information of Yukoners.

The push for this initiative came from the need to bring all Canadian jurisdictions up to a common security standard for driver's licenses. Canada was in discussions with the United States about whether Canadian jurisdictions would be included in the security measures introduced with the American *Real ID Act* (2005).

A major goal of this US legislation was to unify the disparate licensing rules and make it harder to fraudulently obtain a card. This legislation would set minimum standards for what would be accepted as identification for official government purposes. Homeland Security was also working hard to develop electronic database linkages, one of which was a "digital image exchange". This would provide security officials with instant access to, among other things, photographs of all drivers in every jurisdiction in the US.

To date, no decision had been made for Canada to tie into such a system. However, the Information and Privacy Commissioner was interested to know if the Department of Community Services had considered completing a PIA with respect to this initiative, in order to:

- identify and define the purpose(s) for the program, particularly in making the distinction between *Motor Vehicle Act* administration and issues of security;
- define the personal information data elements necessary to meet the program's purposes;
- define how the information is collected, how it will be used and what secondary disclosure would be necessary;
- detail the technical and other information safeguards, i.e. security of the system; and
- identify privacy risks and find ways to justify or mitigate adverse impacts.

The Commissioner discussed the matter with an official at Community Services, who agreed a PIA would be a worthwhile exercise in the design stage of the new licences. He believed it would be some time before they could begin the design because it was still uncertain what standard for a drivers license would be adopted. This office continues to monitor the progress of this initiative.

Safer Communities Legislation

In 2005 all members of the Yukon Legislative Assembly brought forward safer communities legislation. The new legislation, called *Safer Communities and Neighbourhoods Act* (SCAN), would establish a way for a government agency to respond to complaints and put an end to activity that adversely affects or harms a neighbourhood. It would be mirror legislation to that in Manitoba and Saskatchewan.

During the development phase of this legislation, the Commissioner met with officials from the Department of Justice as well as a representative of the Government of Manitoba to participate in consultations about the SCAN initiative.

The Commissioner urged the Department of Justice to complete a PIA to ensure the new legislation would comply with the *Act*. However, no formal request was made for the Commissioner to comment on the privacy implications of the new legislation before it was passed in the Legislature in the spring of 2006.

Document Destruction Program

The Commissioner was advised by the Public Service Commission (PSC) of an initiative developed to expedite the destruction of confidential materials throughout Yukon government offices within Whitehorse. The PSC intended to support compliance with the *ATIPP Act* in implementing the initiative.

Although no specific request was made to comment on the initiative, the Commissioner responded by clarifying several points and providing a checklist of recommended best practices developed by the Ontario Information and Privacy Commissioner after a breach in security of handling and properly disposing of records in that province.

The Commissioner was pleased with the attention paid to the privacy aspects of the project.

Workforce Census

The Public Service Commission was introducing a survey form to help carry out the government's Employment Equity Policy and requested the Commissioner to provide comment. The form was updated to address several issues, including a change to the definition of "disability" so that it was consistent with that used by Statistics Canada for data collection and analysis. The survey would collect demographic data from the Yukon government workforce. The information gathered would then be used to determine the extent to which the workforce reflected the general population it serves and how government should respond to employment equity issues under the policy.

In his review of the survey form, the Commissioner applied the relevant sections of the *ATIPP Act* and tried to identify aspects of the survey that could be strengthened in ways to improve compliance with the purposes and intent of the *Act*.

Several principles of the *Act* were reinforced in his comments. First, the *Act* does not permit the collection of personal information unless, as in this case, the information relates to and is necessary for carrying out a program or activity of the public body. Also, the public body must tell individuals from whom it collects information the purpose for collecting it; the legal authority for its collection; and the title, business address, and business telephone number of an officer or employee who can answer questions about the collection.

The Commissioner also pointed out that the terms "confidentiality" and "privacy protection" are not synonymous under the *Act*. Some provisions consider the fact that information was provided to public bodies in confidence in determining whether subsequent disclosure would be an unreasonable invasion of personal privacy. However, other strong privacy protection provisions in the *Act* extend the scope of privacy protection beyond determining someone's right of access. Therefore, it is more accurate to say that personal information collected by the survey is covered by the privacy protection provisions of the *Act*, rather than referring only to the confidentiality of the information.

The Commissioner was pleased to see the format used to ask whether respondents to the survey would consent to follow-up action by the PSC. Many formats, particularly those that are internet-based, require a respondent to "opt-out" of a default consent, or the question is worded in a way that it must be read several times to know whether to check the box, or not. In this case the survey presented a clear "opt-in" format for consent.

The terms "confidentiality" and "privacy protection" are not synonymous under the *Act*.

CIPPIC ATIPP Manual

The Canadian Internet Policy and Public Interest Clinic (CIPPIC), at the University of Ottawa's Faculty of Law, asked for the assistance of the Information and Privacy Commissioner in reviewing the Yukon chapter of their Canadian Access to Information Manual. This thorough document, presented mostly in FAQ style, guides a person through the process of filing Access to Information Requests at all provincial and federal levels of government.

The first section of this manual explains how to use federal, provincial, and territorial laws to access information about the government. The second section provides information about how to use federal, provincial and territorial laws to request personal information held by the public and private sectors.

Each chapter covers a different jurisdiction, explaining not only how to make a request, but also what can be expected in response, and how an unsatisfactory response can be appealed. Each chapter also provides helpful links to resources such as legislation, government sites and guides.[4]

[4]The Manual can be found online at http://www.cippic.ca/en, following the links through Hot Links, then Privacy and Access to Information.

Study of Aging

The Commissioner was asked to comment on a national study entitled The Canadian Longitudinal Study of Aging (CLSA). The study would collect and study information of individuals chosen at random, for a 20-year period.

The specific line of inquiry was how the study could access and link with "health care utilization databases" — provincial and territorial electronic systems containing target data elements sought by the study. The study proponents were interested in determining what potential legislative, policy, or other barriers might exist to link with Yukon's health care databases. There was also an interest in determining what cautions are apparent in collecting information directly from the CSLA study participants over 20 years.

The Commissioner commented on the personal information protection principles in Yukon's *ATIPP Act* on which privacy protection laws and policies in Canada are built. The general rules are:

- information collected by a public body can only be collected for a specified purpose;
- the use of that information must be consistent with the purpose for which it was collected; and
- to use the information for any other purpose would require the consent of the individual the information is about.

These rules also reflect the principle that personal information collected by public authorities does not become the information of government, to use as it wishes. The information still belongs to the person the information is about. That person is entitled to exercise control over any additional use or secondary disclosure of the information.

The Commissioner also pointed out the absence of a legislative framework to protect personal health information in the hands of custodians not covered by any legislation, such as the Whitehorse General Hospital. The CSLA study expects much of the information to be collected in the study would include information from hospital databases.

The use of health information for research purposes was discussed and the Commissioner pointed to the strong privacy protection standards developed by the Canadian Institute of Health Research (CIHR) and the Canadian Institute for Health Information (CIHI). Their policies are available at http://www.cihr-irsc.gc.ca and http://www.cihi.ca respectively.

The study was urged to develop Data Sharing Agreements, the terms of which would:

- define what data elements would be collected, and on what authority;
- determine what level of consent from individuals is required for the collection and use;
- what secondary disclosure, if any, is contemplated and on what authority; and
- how the information would be disposed of when it is no longer necessary.

Personal information collected by public authorities does not become the information of government, to use as it wishes.

Access to Information and Protection of Privacy Issues

Disclosure of Third Party Personal Information

When a person makes a request for access to records, the public body has the challenging task of both respecting one's right of access to his or her own personal information in the responsive records and protecting the third party personal information also contained in the records.

When an access request is made for records that include the personal information of third parties, the public body must determine whether the disclosure of the third party personal information will be an unreasonable invasion of the third party's privacy. Public bodies are assisted in this determination by specific provisions in section 25 of the *ATIPP Act*.

Section 25(1) states that a public body must deny an applicant access to personal information if disclosure of that information would be an unreasonable invasion of a third party's personal privacy. The *Act* then sets out the circumstances under which the public body is required to deny access to third party personal information because it would be an unreasonable invasion of that person's privacy. Finally, subsection (3) lists specific circumstances in which the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

In one instance, an applicant asked for records from Health and Social Services. The public body decided to remove or obliterate third party personal information from the responsive records. The applicant asked the Commissioner to review the public body's decision.

The Commissioner found the public body had properly applied the relevant sections of the *Act*. The decision to refuse the applicant access to the third party information separated or obliterated from the records at issue, was justified.

25.(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation; or

...

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness; or

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

25.(4) Before refusing to disclose personal information under this section, a public body must consider all the relevant circumstances, including whether

...

(b) the personal information is unlikely to be accurate or reliable;

(c) the personal information has been supplied in confidence;

(d) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant;

(e) the personal information is relevant to a fair determination of the applicant's rights;

Public Health Risk

Section 28(1) of the *ATIPP Act* states that if a public body has reasonable grounds to believe that personal information would reveal the existence of a serious environmental, health, or safety hazard to the public or an affected group, the information must be disclosed. However, section 28(3) adds that the public body must mail a notice of disclosure to the Information and Privacy Commissioner if it is not practicable to notify any third party to whom the information relates.

The Commissioner received such a notice of disclosure from Health and Social Services. The Commissioner responded to the Department by acknowledging that the requirements of section 28(3) had been met, enabling the Department to proceed with the necessary disclosure in order to address the identified public health risk.

Information must be disclosed if health or safety at risk

28.(1) Despite any other provision of this Act, a public body must disclose information to the public or an affected group of people if the public body has reasonable grounds to believe that the information would reveal the existence of a serious environmental, health, or safety hazard to the public or group of people.

(2) Before disclosing information under subsection (1), the public body must, if practicable, notify

(a) any third party to whom the information relates; and

(b) the commissioner.

(3) If it is not practicable to comply with subsection (2), the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party; and

(b) to the commissioner.

Right to Know Week

As Yukon's Information and Privacy Commissioner, I participated in a working group of Commissioners from across Canada to see how we could involve Canadian jurisdictions in celebrating the "right to know".

Around the world, September 28 is celebrated as International Right to Know Day. This began in 2002 in Sofia, Bulgaria at an international meeting of access to information advocates who proposed that September 28 be dedicated to the promotion of freedom of information worldwide. Our working group proposed that in Canada, September 25 – October 1 be designated as Right to Know Week, with events around the country during that time. Each of the jurisdictions made plans to engage people and organizations in a wide range of activities.[5]

In Yukon the first step was to bring together a group of people with an interest in access to information to form a planning committee for the events. I was very pleased that the following people and organizations accepted my invitation to form the Right to Know Yukon Steering Committee, chaired by Robert Pritchard:

- Yukon Public Legal Education Association (YPLEA)
- Yukon Department of Education
- CBC Yukon
- Yukon News
- Whitehorse Star
- Northern Native Broadcasting
- Government of Yukon Chief Information Officer
- Government of Yukon Records Manager
- Yukon Archivist
- Yukon Libraries

[5] For a look at what jurisdictions across Canada did during Right to Know Week, visit the federal Information Commissioner's web site at www.righttoknow.ca.

A number of activities were planned and carried out during Right to Know Week in Yukon. A Proclamation was issued by Yukon Commissioner Geraldine Van Bibber. The activities of the week were promoted through a poster specifically designed for the event. A Right to Know Yukon web site was launched.[6] A number of media articles discussed the 'right to know' and our access to information regime. All Yukon grade 11/12 students were invited to enter an essay writing competition on the topic, "Why the Right to Know is Important in a Democratic Society". Finally, a public forum was held at the Whitehorse Library.

The steering committee welcomed the participation of students in celebrating Right to Know Week. It was hoped that through the essay project students would gain a better understanding of how exercising the right to know is one way of setting democracy into action. Through their compositions they helped raise public awareness and made an important contribution to the purpose of Right to Know Week.

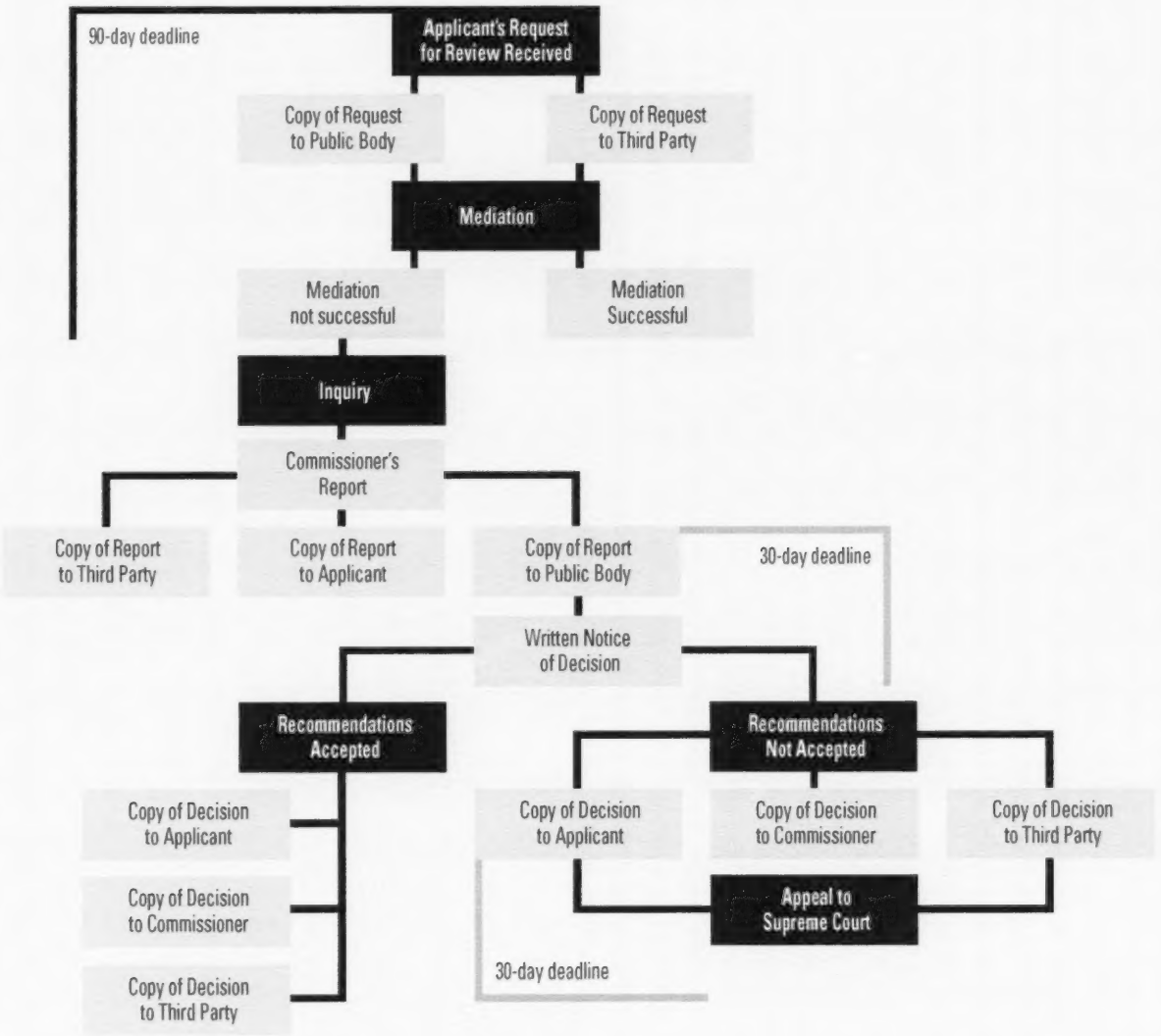
The three essay writing competition winners were Kayla Beddall, Karen Sederberg and Emily Tredger, all from Vanier Catholic Secondary School. They were each presented with a certificate and a plaque. Honourable Mention went to Staci Magnuson from St. Elias Community School in Haines Junction. The winning essays, all informative and thought-provoking, can be found on the Right to Know web site.

The public forum topic was: The 'right to know' in a democratic society — why it is important, where we have been and where we would like to go in the future to increase openness and accountability. Panelists for the forum included Robert Pritchard, Executive Director of YPLEA; Richard Mostyn, Editor of the Yukon News; Sheri Hogeboom, lawyer with the Neighbourhood Law Centre; and myself in my role as Information and Privacy Commissioner. The moderator was Russ Knutson from CBC Radio. Each of the panelists voiced their unique perspective on the topic. After this the audience made comments and asked questions of the panelists. It was agreed this was an excellent way to raise public awareness, and should be repeated next year.

I want to acknowledge contributions of time, energy and ideas by the members of the Yukon Right to Know Steering Committee, the staff of my office, and particularly the work of our summer STEP student, Angela Dunlop, who acted as secretary for the committee and coordinated much of the activity leading up to Right to Know Week. The week was regarded as a success and we look forward to making next year's event even better.

[6] See www.righttoknowyukon.ca.

Request for Review Flow Chart



Statistical Summaries

ATIPP FILES BY LEGISLATION

SECTION OF THE *ACT*	DESCRIPTION	OPENED IN 2006
28(3)	Notifying the Commissioner of a public body's intent to proceed with disclosure of information if that information would reveal the existence of a serious environmental, health, or safety hazard to the public or group of people.	1
42(b)	General powers to receive complaints or comments from the public concerning the administration of the *Act*, conduct investigations into those complaints, and report on those investigations.	1
42(c)	General powers to comment on the implications for access to information or for protection of privacy of existing or proposed legislative schemes or programs of public bodies.	6
48(1)(a)	Request for a review of a refusal by the public body or the records manager to grant access to the record.	2
48(1)(b)	Request for a review of a decision by the public body or the records manager to separate or obliterate information from the record.	5
48(1)(c)	Request for a review of a decision about an extension of time under section 12 for responding to a request for access to a record.	5
48(1)(d)	Request for a review of a decision by a public body or the records manager to not waive a part or all of a fee imposed under this Act.	1
48(4)	Request by a third party for a review of a decision by a public body to disclose personal information about the third party.	2

S.48 REQUESTS FOR REVIEW

Brought forward from 2005		—
Received in 2006		15
Education	2	
Energy, Mines and Resources	1	
Health and Social Services	12	
TOTAL		**15**
Completed in 2006		13
To inquiry	1	
Successfully mediated/settled	4	
Discontinued	8	
Carried forward to 2007		2

S.42(b) COMPLAINTS

Brought forward from 2005		3
Received in 2006		1
TOTAL		**4**
Completed in 2006		3
Investigated	1	
Settled	2	
Carried forward to 2007		1

ATIPP REQUESTS FOR INFORMATION

TOTAL	**38**